

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DEBRA D. SMITH)	
Claimant)	
VS.)	
)	Docket No. 270,654
U.S.D. 259)	
Respondent)	
Self-Insured)	

ORDER

Claimant requested review of the April 25, 2003 Award entered by Administrative Law Judge (ALJ) John D. Clark. The Appeals Board (Board) heard oral argument on October 17, 2003 in Wichita, Kansas.

APPEARANCES

Randall J. Price of Wichita, Kansas, appeared for claimant. Robert G. Martin II of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The Board considered the record and adopts the stipulations listed in the Award. In addition, respondent stipulated that claimant made timely written claim for compensation for her March 4, 1996 accidental injury, but does not stipulate claimant made timely written claim for the series of accidents she alleges occurred each and every working day thereafter through June 12, 2000, her last day of work for respondent. The parties also agreed during oral argument to the Board that timely application for hearing was an issue before the ALJ even though it was not listed as such in the ALJ's Award. The Board notes that it was listed as an issue in the claimant's submission letter to the ALJ.¹ At the regular hearing respondent announced that all applicable statutes of limitations defenses were issues for the ALJ's determination at the time of final award.² And although respondent

¹ Submittal Brief of Claimant at 3 (filed April 18, 2003).

² R.H. Trans. at 5.

did not specifically list timely Application for Hearing under the "Issues" portion of its brief to the Board, the issue was raised and discussed in the body of the brief.³

ISSUES

Finding claimant had failed to prove she made timely written claim for compensation, Judge Clark denied all benefits. Claimant appealed and seeks review of this finding as well as a determination of the remaining issues not reached by the ALJ.

Respondent admits claimant suffered a work-related accident on March 4, 1996, but denies claimant suffered any permanent worsening thereafter either by a series of work-related accidents or otherwise. Respondent further contends claimant's injury was temporary and, therefore, resulted in no permanent impairment. Claimant was treated and released on March 4, 1996, without restrictions.

Although claimant announced during oral argument to the Board that she was willing for the Board to decide all issues, including those not reached by the ALJ in the Award, respondent was unwilling to so stipulate. If the ALJ's Award were to be reversed, respondent preferred that the matter be remanded to the ALJ for a determination of the remaining issues. Accordingly, the issues for the Board's review concern the compensability of claimant's injury; specifically, the timeliness of her notice, written claim and application for hearing. In order to decide these issues the Board must first determine claimant's date of accident or accidents. Accordingly, even though the ALJ did not make a specific finding as to claimant's date or dates of accident, the Board will decide that issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board finds that the ALJ's Award should be affirmed but for different reasons.

On March 4, 1996, claimant suffered personal injury when she fell at work. That same day she was treated at the Wichita Clinic. X-rays of her sacrum and coccyx were normal. Claimant was released to return to work the following day without restrictions. Claimant did return to work and although she was advised to return as needed, claimant did not seek additional medical treatment for over 18 months. When claimant did obtain additional treatment she did not return to the Wichita Clinic, nor did she request that respondent provide her additional treatment. Instead, claimant went on her own to a physician of her choosing. Furthermore, the medical bills for that unauthorized treatment were presented to claimant's health insurance carrier, and not to respondent's workers

³ Brief of Appellee Respondent and Self-Insured at 16 (filed June 24, 2003).

compensation insurance carrier. Claimant's last day of employment with respondent was June 12, 2000. On October 17, 2001, claimant filed her Application for Hearing with the Division of Workers Compensation.

The Board finds claimant suffered personal injury by accident on March 4, 1996 and that her accidental injury arose out of and in the course of her employment with respondent. Claimant gave timely notice of her accident to respondent and, in addition, completed an Employee's Statement and signed the Employer's Report of Accident form for respondent in order to receive medical treatment.⁴ Those written statements signed by claimant satisfy the requirement that claimant made a written claim for compensation. These facts are not in dispute. What is disputed is whether or not after March 4, 1996, claimant suffered a series of accidents and aggravations as a result of her regular work activities. Respondent disputes that such a series of accidents has been established by the evidentiary record. The Board agrees. Claimant has failed to prove a series of work-related accidents after March 4, 1996.

Based upon a March 4, 1996 accident, claimant's Application for Hearing filed October 17, 2001, was not timely.⁵

Award

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated April 25, 2003, denying claimant additional benefits is affirmed, although for different reasons.

IT IS SO ORDERED.

⁴ R.H. Trans. Resp. Ex. 1 and Tolberd Depo. Ex. 1.

⁵ K.S.A. 44-534(b).

Dated this ____ day of October 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randall J. Price, Attorney for Claimant
 Robert G. Martin II, Attorney for Respondent
 John D. Clark, Administrative Law Judge
 Paula Greathouse, Workers Compensation Director